

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Gas and Electric Company (U 39 G),

Complainant,

vs.

Calpine Corporation, CPN Pipeline Company;
Calpine Energy Services, L.P., Calpine Natural
Gas Company; Lodi Gas Storage, LLC; and
DOES 1-10,

Defendants.

Case 03-07-031
(Filed July 22, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING
APPROVING PROTECTIVE ORDER**

This ruling approves the text of a Protective Order designed for use during this proceeding to protect the confidential material produced in discovery by the various parties to the proceeding. The final version of the Protective Order, attached hereto as Appendix A, reflects negotiations among the parties to be bound, as well as the results of Law and Motion hearings held before me. I have reviewed the Protective Order and find it reasonable for the purposes proposed by the parties.

Therefore, **IT IS RULED** that all Participants in this proceeding (as that term is defined in the Protective Order) shall, if they wish to receive Protected Materials (a term also defined in the Protective Order) be bound by the

Protective Order and sign the Non-Disclosure Certificate accompanying the Protective Order.

Dated November 21, 2003, at San Francisco, California.

/s/ SARAH R. THOMAS

Sarah R. Thomas
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Approving Protective Order on all parties of record in this proceeding or their attorneys of record.

Dated November 21, 2003, at San Francisco, California.

/s/ ELIZABETH LEWIS

Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

APPENDIX A

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PACIFIC GAS AND ELECTRIC
COMPANY (U 39 G),
Complainant,

Case No. C.03-07-031

v.

CALPINE CORPORATION; CPN
PIPELINE COMPANY; CALPINE
ENERGY SERVICES, L.P.;
CALPINE NATURAL GAS
COMPANY; LODI GAS STORAGE,
LLC; DOES 1-10,
Defendants.

PROTECTIVE ORDER

1. This Protective Order shall govern access to and the use of all Protected Materials in this proceeding as hereinafter defined. Notwithstanding any order terminating this complaint proceeding, this Protective Order shall remain in effect for three years after a final and unappealable order terminating this proceeding, or until, after noticed motion and a hearing, it is specifically modified or terminated by the Assigned Commissioner, the Assigned Administrative Law Judge (“Assigned ALJ”), the Law and Motion Administrative Law Judge (“Law and Motion ALJ”) or the California Public Utilities Commission (“CPUC” or “Commission”). This Protective Order does not address the right of employees of the Commission acting in their official capacities to view Protected Materials, because Commission employees are

entitled to view such Protected Materials in accordance with the requirements of Section 583 of the Public Utilities Code and the Commission's General Order 66-C.

2. A Participant, as hereinafter defined, may designate as protected those materials which customarily are treated by that Participant as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Participant or its customers, suppliers or vendors to risk of competitive disadvantage or other business injury.

3. Definitions -- For purposes of this Order:

- a. The term "Participant" shall mean the Complainant and the Defendants herein, and those Intervenorrs designated as such by the Commission in this complaint proceeding.
- b. (1) The term "Protected Materials" means (A) materials in either hardcopy or electronic form provided by a Participant in response to formal discovery requests and/or voluntarily produced and designated by such Participant as protected; (B) any information contained in or obtained from such designated materials; (C) any other hardcopy or electronic materials which are made subject to this Protective Order by the Commission, by the Assigned Commissioner, by the Assigned ALJ, by the Law and Motion ALJ, by any court or other body having appropriate authority, or by agreement of the Participants; (D) notes in hardcopy or electronic form of Protected Materials; and (E) hardcopy or electronic copies of Protected Materials. The Participant producing the Protected Materials shall physically mark on each page the term "Protected Materials" to indicate that they are Protected Materials. If the Protected Materials are produced in electronic form, the "Protected

Materials” designation shall be inserted on each page as a header or a footer if practicable, or if not practicable, then the email, electronic file and/or disc shall be so marked and it is the recipient’s responsibility to treat all such documents/materials in said email, electronic file, and/or disc as Protected Materials. If Protected Materials produced in electronic form are downloaded onto computer storage media, they shall be downloaded onto a secure computer network or onto secure computer hard drives for review and analysis purposes.

(2) The term "Highly Sensitive Documents" refers to a sub-category of PROTECTED MATERIALS that the producing Participant believes contain especially confidential trade secret, market-sensitive information including but not limited to customer contracts or other information containing details of relationships with customers, business plans, strategic plans, pricing information including but not limited to both actual pricing and pricing methodology, financial projections or other financial data proprietary to the producing Participant which, if disclosed to competitors would, in the view of the producing Participant, detrimentally affect the ability of that Participant to compete. Any Participant producing Highly Sensitive Documents shall handle and mark them as described in Paragraph 3(b)(1), except the markings shall state "Highly Sensitive Document" rather than "Protected Material." It is anticipated that Participants will address specific concerns or needs unique to the production and/or review or use of Highly Sensitive Documents on a case by case basis. In view of the additional burden associated with the designation of Highly Sensitive Documents, Participants shall use

their best efforts to minimize the use of such designation. Highly Sensitive Documents shall not be transmitted via the Internet or any other method of electronic transmission. The Participants expressly reserve all of their legal rights to object to any production request(s) for Highly Sensitive Documents based upon trade secret privilege or other basis.

(3) The term "Notes of Protected Materials" means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraph 3(b)(1). Protected Materials produced or converted into electronic form that are copied onto a computer network, computer hard drives, or any other non-hardcopy medium (including, without limitation, electronic, magnetic, and optical backup copies, CDs, mini-discs, diskettes, zip drives, and other storage devices) shall be regarded as Electronic Notes of Protected Materials. Notes of Protected Materials and Electronic Notes of Protected Materials are subject to the same restrictions provided in this order for Protected Materials.

(4) The term PROTECTED MATERIALS, as used herein, shall include the categories of Protected Materials, Highly Sensitive Documents, Notes of Protected Materials and Electronic Notes of Protected Materials, except as separately identified and discussed.

(5) PROTECTED MATERIALS shall not include information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order or any other agreement or duty to keep the information confidential. Any Participant intending to disclose any information in reliance upon

the claim that the information is public knowledge shall comply with paragraph 12 herein.

- c. The term "Non-Disclosure Certificate" shall mean the form of certificate annexed hereto by which Reviewing Representatives, as hereinafter defined, who have been granted access to PROTECTED MATERIALS shall certify their understanding that such access to PROTECTED MATERIALS is provided pursuant to the terms and restrictions of this Protective Order, and that such Reviewing Representatives have read the Protective Order and agree to be bound by it.
- d. The term "Reviewing Representative" shall mean any individual other than one directly engaged in electric marketing, including any credit or financing thereof, or in natural gas marketing, including marketing of natural gas transmission, storage, hub services, and market center services, and any credit or financing of natural gas marketing, or in the direct secretarial or administrative support thereof, and who is: (1) engaged in the conduct of this proceeding, (2) who needs access to some or all of the PROTECTED MATERIALS in order to carry out that person's responsibilities in this proceeding, (3) who has been disclosed to the other parties as an intended Reviewing Representative, by signing a Non-Disclosure Certificate, and (4) who falls within one or more of the following categories:
 - (1) An attorney who has made an appearance in this proceeding for a Participant;
 - (2) employees or other representatives of Participants appearing in this proceeding with significant

responsibility for assisting, evaluating or advising the Participant in this proceeding, other than employees or other representatives precluded from becoming Reviewing Representatives;

- (3) attorneys associated for purposes of this proceeding with an attorney described in (1);
- (4) experts retained by a Participant for the purpose of advising, preparing for or testifying in this proceeding, other than experts precluded from becoming Reviewing Representatives;
- (5) paralegals, secretaries, and other support personnel working for an attorney or expert described in (1), (3), or (4); or
- (6) a person designated as a Reviewing Representative by order of the Assigned Commissioner, the Assigned ALJ or the Commission;

4. PROTECTED MATERIALS shall be made available under the terms of this Protective Order only to Participants and only through their Reviewing Representatives as provided in Paragraphs 6, 7, 9, 10 and 11.

5. PROTECTED MATERIALS shall remain available to Participants until an order terminating this proceeding becomes no longer subject to judicial review. If requested to do so in writing after that date, the Participants shall, within fifteen days of such request, return the PROTECTED MATERIALS (excluding Notes of Protected Materials) to the Participant that produced them, and destroy Notes of Protected Materials, except that two copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Material may be retained, if they are

maintained in accordance with Paragraph 6 below. Electronic Notes of Protected Materials shall be deemed to have been destroyed at the time they have been deleted from the computer network, hard drives, or any other non-hardcopy medium (including, without limitation, electronic, magnetic, and optical backup copies, CDs, mini-discs, diskettes, zip drives, and other storage devices) on which they were maintained. Within such time period each Participant, if requested to do so, shall also submit to the producing Participant an affidavit stating that, to the best of its knowledge: (1) all PROTECTED MATERIALS other than copies of filings and exhibits in this proceeding that contain PROTECTED MATERIALS have been returned; (2) all copies of filings, official transcripts and exhibits in the Participant's Possession in this proceeding that contain PROTECTED MATERIALS either have been returned or will be maintained in accordance with Paragraph 6; and (3) all Notes of Protected Materials and Electronic Notes of Protected Materials have been destroyed. Until they are returned or destroyed as described herein, all PROTECTED MATERIALS shall remain subject to the Protective Order.

6. a. All PROTECTED MATERIALS shall be maintained by the Participant in a secure and segregated place. Any party who receives PROTECTED MATERIALS shall use them only for the purposes of litigation and settlement of this proceeding. Any party who receives PROTECTED MATERIALS shall be entitled to make copies of such materials as are reasonably necessary for the accomplishment of that party's purposes, subject to paragraph 6(b), provided that all such copies are clearly marked as "PROTECTED MATERIALS" and that such copies shall be so deemed under this Order.

b. Each Participant receiving Highly Sensitive Documents shall maintain a log which shall quantify and account for the number of copies made of each specific document, and each person or persons who received such copies.

The requirement to so maintain a log shall apply to all copying and disclosures under this Order, including but not limited to those matters addressed in Paragraphs 7 and 10 below. Each Participant receiving Highly Sensitive Documents shall be obligated to provide a copy of such log to the Participant(s) who produced them upon three days written notice from that Participant, except that no Participant is required hereunder or otherwise to disclose its consultants and other work product to any other party or Participant. Such notice shall be provided to a designee to be named within three business days of the entry of this Order.

7. PROTECTED MATERIALS shall be treated as confidential by each Participant and Reviewing Representative in accordance with this Protective Order and the Non-Disclosure Certificate executed pursuant to Paragraph 9. PROTECTED MATERIALS shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except: (1) pursuant to a document filed or served in this proceeding in accordance with Paragraph 12; (2) to a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding; or (3) pursuant to any order of the Assigned ALJ, the Law and Motion ALJ, or the Commission. Participants and their Reviewing Representatives may use PROTECTED MATERIALS and information contained therein solely for the purpose of litigating the issues in this proceeding. Participants and their Reviewing Representatives may not use PROTECTED MATERIALS and information contained therein for any other purpose or in any other regulatory or judicial proceeding, in a government hearing or a meeting. Reviewing Representatives may make copies of PROTECTED MATERIALS, but such copies become PROTECTED MATERIALS. Reviewing Representatives may make notes

of PROTECTED MATERIALS, which shall become Notes of Protected Materials. Notwithstanding these provisions, a recipient of PROTECTED MATERIALS may disclose them if required by law or applicable legal process, including an order of a court of competent jurisdiction, provided that in the event that the recipient becomes aware of any act which would require the disclosure of the PROTECTED MATERIALS, it shall so notify the producing Participant, and shall cooperate in the efforts of the producing Participant to protect the PROTECTED MATERIALS.

8. The number of Reviewing Representatives for a Participant must be reasonable, and nothing in this order shall preclude a party from bringing a motion seeking to limit the number of Reviewing Representatives designated by a Participant on the grounds that a Participant has exceeded this reasonableness threshold.

9. a. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to PROTECTED MATERIALS pursuant to this Protective Order unless that Reviewing Representative has first completed and executed a Non-Disclosure Certificate in the form attached hereto. A Reviewing Representative shall provide in the Non-Disclosure Certificate information regarding job title, employer or who the Reviewing Representative is representing, and Job Responsibilities and duties in sufficient detail to enable other Participants to determine whether to allow such Reviewing Representative access to Highly Sensitive Documents. Each Participant shall serve the Non-Disclosure Certificates executed on its behalf on all other Participants in this proceeding within five (5) business days after they are signed, except as otherwise provided herein.

b. If any Participant producing Highly Sensitive Documents objects

to the review of its Highly Sensitive Documents by any Reviewing Representative, that Participant must make its objection in writing (which may be via e-mail or fax to all participants) within five (5) business days of receipt of that Reviewing Representative's Non-Disclosure Certificate. If no written objection is timely made, the Reviewing Representative shall be deemed acceptable by all Participants. The Participants agree to work in good faith to resolve any disputes over access by Reviewing Representatives to be given to Highly Sensitive Documents. If the Participants cannot in good faith resolve any such disputes, the Participant who objects to the Reviewing Representative's access shall file a motion in this complaint proceeding to deny access by any such Reviewing Representative. Disclosure of Highly Sensitive Documents to a Reviewing Representative may not be made until (i) the expiration of the five (5) day period set forth above, (ii) agreement by affected Participants regarding review by such Reviewing Representative, or (iii) the Participant's motion is granted.

10. A Reviewing Representative may exchange PROTECTED MATERIALS with any other Reviewing Representative for the same Participant as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed Non-Disclosure Certificates. In the case of Highly Sensitive Documents, such sharing may occur only among those Reviewing Representatives who are authorized to review such Highly Sensitive Documents pursuant to Paragraph 9(b) above. However, Reviewing Representatives for different Participants may not discuss and/or share analyses of Protected Materials, analyses of Notes of Protected Materials and information contained therein unless the producing Participant specifically grants permission for such discussion and/or sharing, and then only if each Reviewing Representative has executed a Non-Disclosure Certificate. Reviewing

Representatives and Participants receiving such shared analyses shall treat them as Notes of Protected Materials. In the event that any Reviewing Representative to whom the PROTECTED MATERIALS are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 3(d), access to PROTECTED MATERIALS by that person shall be terminated. Even if no longer engaged in this complaint proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and that certification.

11. Prior to reviewing any PROTECTED MATERIALS, consultants and experts of any Participant shall execute a Non-Disclosure Certificate in accordance with the procedures contained in paragraph 9 herein, except that a Participant using the consultant or expert shall retain the executed Non-Disclosure Certificate and not produce those to any Participant unless and until said consultant or expert is disclosed as a witness who will provide expert testimony in this complaint proceeding. No Participant shall use as a consultant or expert any individual or entity precluded from acting as a Reviewing Representative, as defined in paragraph 3(d). At the time an expert is disclosed, that expert's executed Non-Disclosure Certificate shall be produced, along with a log of the PROTECTED MATERIALS reviewed by the expert. No Participant shall be required to disclose at any time the identity of its consultants who have not been, or will not be, disclosed as testifying expert witnesses.

12. The Assigned ALJ or the Law and Motion ALJ may resolve any disputes arising under this Protective Order. Any Participant that believes that Materials designated as PROTECTED MATERIALS are within public knowledge or otherwise contests the designation of materials as PROTECTED MATERIALS shall notify the Participant that designated the PROTECTED MATERIALS as

such by specifying in writing the materials whose designation is contested within 10 days of receipt of the disputed PROTECTED MATERIALS. Prior to presenting any dispute under this Protective Order to the Assigned ALJ or the Law and Motion ALJ, the parties to the dispute shall use their best efforts to resolve it. If the parties are unable to resolve the dispute, the receiving Participant may file a motion with the Assigned ALJ or the Law and Motion ALJ to make a prima facie showing that the materials should not continue to be protected. In any challenge to the designation of materials as protected, the producing Participant shall have the burden to demonstrate that the materials deserve protection if the moving Participant makes its prima facie showing. If the Assigned ALJ finds that the materials at issue are not entitled to protection, the procedures of Paragraph 18 shall apply.

13.a. All documents filed or served in this proceeding that reflect or contain PROTECTED MATERIALS (other than data responses and related correspondence exchanged between Participants), including without limitation all motions, testimony, exhibits, and briefs, shall be filed and served in sealed envelopes or other appropriate containers endorsed to indicate that they are sealed pursuant to this Protective Order. Such documents shall be marked "PROTECTED MATERIALS" and shall be filed under seal and served under seal upon the Assigned ALJ and all Participants. An unsealed redacted copy of such written testimony or exhibits shall also be filed and served at the same time, and all other parties who are not Participants shall be served only such redacted copies.

b. If any Participant desires to include, utilize, or refer to any PROTECTED MATERIALS or information derived therefrom in testimony or exhibits at a hearing in this proceeding, such Participant shall first notify both counsel for the producing Participant and the Assigned ALJ of such desire a

minimum of three (3) business days prior to such intended use. Thereafter during any hearing, presentation of such PROTECTED MATERIALS and transcription of testimony or other discussion concerning them will be governed by procedures determined by the Assigned ALJ, the Law and Motion ALJ or the Commission.

14. Nothing in this Protective Order shall be construed as precluding any Participant from objecting to any request to produce information or materials of any type, including PROTECTED MATERIALS, on any legal grounds available to it, including without limitation the relevance of such information or materials, or the burden on a Participant to produce such materials .

15. Nothing in this Protective Order shall be construed as precluding any Participant, or employees, agents, or other representatives of that Participant, whether they are Reviewing Representatives or not, from accessing that Participant's own PROTECTED MATERIALS, and the portions of any documents filed or served in this proceeding that contain such PROTECTED MATERIALS.

16. Nothing in this Protective Order shall preclude any Participant from requesting the Assigned ALJ, the Law and Motion ALJ, the Commission, or any other body having appropriate authority, to find that this Protective Order should not apply to all or any materials previously designated as PROTECTED MATERIALS pursuant to this Protective Order. The Assigned ALJ, the Law and Motion ALJ, and/or the Commission may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

17. Each party governed by this Protective Order has the right to seek changes in it as appropriate from the Assigned ALJ, the Law and Motion ALJ, or the Commission. Before seeking any change in this Protective Order, a

Participant must first meet and confer with all other Participants concerning the proposed changes.

18. If the Assigned ALJ, the Law and Motion ALJ, or the Commission finds or orders at any time in the course of this proceeding that all or part of the PROTECTED MATERIALS need not be protected, those materials shall no longer be subject to the protection afforded by this Protective Order; unless the Participant seeking the designation of PROTECTED MATERIALS requests and receives from the Assigned ALJ, the Law and Motion ALJ, or the Commission a stay of any finding or order pending the filing and ultimate ruling on any interlocutory appeal of any finding or order. None of the Participants waives its rights to seek additional administrative or judicial remedies after a decision respecting PROTECTED MATERIALS or Reviewing Representatives, or the Commission's denial of any appeal thereof.

19. Nothing in this Protective Order shall be deemed to preclude any Participant from independently seeking through discovery in any subsequent administrative or judicial proceeding information or materials produced in this complaint proceeding. If any dispute arises about the information or materials being sought, the Participant seeking production in such subsequent proceeding may not make reference therein to the content of such information or materials being sought, if such knowledge derives solely from the Participant's access to such information or materials pursuant to this Protective Order; however, such Participant may generally identify the information or materials sought by a general description, including date, recipient and general subject matter, sufficient for purposes of the Participant's motion, and providing that the actual content of the information or materials is protected.

20. None of the Participants waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated

disclosure of PROTECTED MATERIALS. In particular, any actual or attempted release or use of PROTECTED MATERIALS other than as contemplated under this Protective Order may lead to irreparable injury which could not adequately be compensated through Commission remedies or monetary damages, and may therefore be enjoined.

21. The contents of PROTECTED MATERIALS or any other form of information that copies or discloses PROTECTED MATERIALS shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this proceeding. Any violation of this Protective Order and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

22. If a party inadvertently produces materials that could have been designated PROTECTED MATERIALS, and fails to mark it as such, the receiving Participant has no obligation to restrict disclosure of such materials unless and until it becomes aware of the error. As soon as the receiving Participant becomes aware of the inadvertent production, the Producing Participant must be treated as if they had been timely designated under this Protective Order, and the receiving Participant must endeavor in good faith to obtain any copies of the materials it distributed or disclosed to persons not authorized to access such information as set forth above, as well as any copies made by such persons.

23. If a Participant inadvertently produces a document that it later discovers or in good faith asserts to be an attorney-client or work product privileged document, the production of that document shall not be deemed to constitute the waiver of any applicable privilege. In such circumstances, the producing Participant must immediately notify the receiving Participant of the inadvertent production, and request the return or confirmed destruction of the privileged materials. Within five (5) days of receiving such notification, the

receiving Participant shall return or confirm destruction of all such materials, including any summaries thereof. Such return or confirmation of destruction shall not preclude the receiving party from seeking to compel production of the materials for reasons other than its inadvertent production, and shall not constitute an admission by the receiving Participant that the materials are, in fact, privileged in any way.

24. This Agreement shall not be modified, amended or waived except by order of the Assigned ALJ, the Law and Motion ALJ or the Commission.

Dated: _____, 2003, at San Francisco, California.

Sarah R. Thomas
Presiding Administrative Law
Judge

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COMPANY; LODI GAS STORAGE,
LLC; DOES 1-10,
Defendants.

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to PROTECTED MATERIALS (Protected Materials, Highly Sensitive Documents, Notes of Protected Materials, Electronic Notes of Protected Materials) is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the PROTECTED MATERIALS, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order. I will use information contained therein solely for the purpose of litigating the issues in this proceeding. I will not use PROTECTED MATERIALS and information contained therein for any other purpose or in any other regulatory or judicial proceeding or governmental hearing or meeting. At the conclusion of this proceeding, I will return all Protected Materials and Highly Sensitive Documents, and destroy all Notes of Protected Materials and Electronic

Notes of Protected Materials. I acknowledge that a violation of this certificate constitutes a violation of an order of the California Public Utilities Commission.

By: _____ Date: _____

Title: _____

Employer/Representing: _____

Job Responsibilities and Duties: _____

(END OF APPENDIX A)